

EASTERN DIVISION  
NO. 4:11-CR-14-2-BO  
NO. 4:13-CV-219-BO

Respondent.

## ORDER

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*Diaz*, 2013 U.S. App. LEXIS 24134 at \*1–2. In *Diaz*, the government presented an affidavit from counsel attesting that Diaz never requested that a notice of appeal be filed and the district court denied relief with respect to that claim after determining that it lacked credibility. *Id.* However, the Fourth Circuit noted that the district court could not make a credibility determination without an evidentiary hearing. *Id.* at \*2–3.

Accordingly, the Court will hold an evidentiary hearing on petitioner's claim that he instructed his attorney to file a direct appeal. Rule 8(c) of the Rules Governing § 2255 Proceedings requires that the Court appoint counsel to represent petitioner at an evidentiary hearing if he meets the indigency requirements. *See also United States v. Harris*, 217 F.3d 841 (4th Cir. 2000) (unpublished table decision). As petitioner was previously determined to meet the indigency requirements, Raymond Tarlton is hereby APPOINTED to represent petitioner for this evidentiary hearing. 18 U.S.C. § 3006A. Pursuant to Rule 8(c) of the Rules Governing section 2255 Proceedings the Court will conduct the hearing as soon as is practicable after giving the attorneys adequate time to investigate and prepare. The court will consider petitioner's remaining claims and the government's motion to dismiss after it has conducted the evidentiary hearing.

### CONCLUSION

For the foregoing reasons, the Court will hold an evidentiary hearing as to petitioner's claim that he instructed his attorney to file a direct appeal. The clerk is DIRECTED to provide a copy of this order to the Office of the Federal Public Defender and Raymond Tarlton.

SO ORDERED. This the 27 day of March, 2014.

  
TERRENCE W. BOYLE  
UNITED STATES DISTRICT JUDGE